IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

OP.No. 24200 of 2001(E)

PETITIONER:

SRI.GEORGE JOSEPH, S/O.JOSEPH,
VALIYAPARAMBIL HOUSE,
ARAKULAM P.O., THODUPUZHA,
U.D.CLERK MUNSIFF COURT,
IDUKKI.

BY ADV. SRI.R.DIVAKARAN
SRI.BINOI GEORGE (CHERUKARA)

RESPONDENTS:

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1. THE REGISTRAR, HIGH COURT OF KERALA.

2. THE DISTRICT JUDGE, DISTRICT COURT, THODUPUZHA.

3. G.DIVAKARAN, U.D.CLERK,
MUNSIFF COURT, DEVIKULAM,
IDUKKI DISTRICT.

4. K.J.SEBASTIAN, U.D.CLERK, MUNSIFF COURT, IDUKKI.

5. M.MOHITHEEN KUNNU, U.D.CLERK, MUNSIFF COURT,
KATTAPPANA, IDUKKI DISTRICT.

BY FOR 1 AND 2, GOVERNMENT PLEADER, SMT.SMITHA SUKUMAR
FOR R3, SRI.N.M.VARGHESE
SRI.DENIZEN KOMATH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 24200 of 2001(E)

APPENDIX

ORDER ON C.M.P.NO.39600/2001 IN OP.No. 24200 of 2001(E)

CLOSED.

SD/-THOTTATHIL B.RADHAKRISHNAN, JUDGE

15/06/2007

PETITIONER'S EXTS:

EXT.P1 THE TRUE COPY OF THE FINAL LIST DATED 24/12/1994

EXT.P2 THE TRUE COPY OF THE REPRESENTATION DATED 10/1/1995

EXT.P3 THE TRUE COPY OF THE OFFICIAL MEMORANDUM ISSUED BY THE 2ND RESPONDENT DATED 14/2/1995.

EXT.P4 THE TRUE COPY OF THE DRAFT OF THE SENIORITY LIST OF NON-GAZETTED OFFICERS IN THE IDUKKI CIVIL JUDICIAL DISTRICT. DATED AS ON 1/7/1996.

EXT.P5 THE TRUE COPY OF THE REPRESENTATION DATED AS ON 1/7/96

EXT.P6 THE TRUE COPY OF THE MEMO ISSUED FOR AND ON BEHALF OF THE 2ND RESPONDENT DATED 5/5/96.

EXT.P7 THE TRUE COPY OF THE DEPARTMENT TEST PASSED BY THE PETITIONER.

EXT.P8 THE TRUE COPY OF THE FINAL SENIORITY OF NON-GAZETTED OFFICERS IN THE IDUKKI CIVIL JUDICIAL DISTRICT IN THE YEAR AS ON 96.

EXT.P9 THE TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P10 THE TRUE COPY OF THE APPEAL MEMORANDUM DATED 23/3/1998

EXT.P11 THE TRUE COPY OF THE ORDER REJECTING THE APPEAL SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED, 17/7/1999.

EXT.P12 THE TRUE COPY OF REVIEW PETITION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 3/8/99.

EXT.P13 THE TRUE COPY OF THE ORDER REJECTING THE REVIEW PETITION BY THE 1ST RESPONDENT DATED 3/1/2001.

EXT.P14 THE TRUE COPY OF THE ORDER DATED 19/2/2004.

\\TRUE COPY//

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 24200 of 2001 (E)

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Dated this the 15th day of June, 2007

J U D G M E N T

The petitioner was appointed as a Lower Division Clerk, on 18/12/1990 and probation duly declared on 19/12/1992. He became test qualified for promotion as Upper Division Clerk on 29/06/1993. Going by paragraph (4) of the counter affidavit, petitioner is admittedly senior to respondents 3 to 5, in the Lower Division Cadre. This fact situation is not disputed by the private respondents, though they have been served notice of this original petition.

2. In the provisional seniority list of UDCs, as on 01/07/1994, issued on 24/09/1994, the private respondents were placed above the petitioner, indisputably, for no reason referable to Part II of the General Rules. However, the petitioner objected to that only after Ext.P1 final seniority list was issued on 24/12/1994. On 10/01/1995, he filed a representation (Ext.P2) before the District Judge, seeking review of the final seniority list. That application

was rejected by the District Judge as per Ext.P3, dated 14/02/1995, on the ground that the petitioner had not objected to the provisional seniority list.

3. Thereafter, Ext.P4 provisional seniority list of UDCs, as on 01/07/1996, was issued. Petitioner placed Ext.P5 objections. By Ext.P8 order, his objections were found to be factually correct. But his objections were rejected stating that he had objected to the final seniority list as on 01/07/1994 on the very same ground, but his such objection was rejected on the ground that he had not filed his objections within the time limit prescribed, and that he had not questioned that final seniority list before the High Court.

4. Against Ext.P8 final seniority list as on 01/07/1996, he filed Ext.P9, before the District Judge, and Ext.P10 appeal before the High Court. By Ext.P11 proceedings, the High Court noticed the views of the District Judge and concluded that the seniority issue raised by the appellant has become final as early as on 01/07/1994 and hence, his appeal was rejected, as per Ext.P11. He sought a review of that, which also was rejected, as per Ext.P13.

5. By I.A.No.5631/2006, the petitioner has brought on record Ext.P14, by which the High Court decided the case of P.N.Somaraj, who is also a U.D.C, included in the list as on 01/07/1994 and then placed below the third respondent. By Ext.P14 order, the High Court granted relief to Sri Somaraj. As noticed from the counter affidavit of the official respondents, the only ground on which the petitioner's claim for seniority over the private respondents stands rejected is that he had not filed objections to the provisional seniority list of U.D.Cs as on 01/07/1994.

6. While it can immediately be noticed that no reason whatsoever was there to place the petitioner below the private respondents in that provisional seniority list, the only contention in opposition to this original petition is that he had not objected to the provisional seniority list as on 01/10/1994 and had not appealed against Ext.P3 decision of the District Judge rejecting his objections to Ext.P4 final seniority list.

7. Having noticed that the private respondents have not placed any counter affidavit and are not contesting the original petition

on merits on the basis of the facts, and still further that there are no grounds urged in opposition to the original petition other than the plea that the petitioner had not objected to the provisional list as on 01/07/1994, in time, it needs to be examined whether that by itself is a ground to deprive the petitioner of his legitimate rights, going by the date of entry into service, particularly, when his service particulars, even on 01/07/1994, would show that he had passed all the relevant tests and was well above the private respondents in his seniority position as U.D.C.

8. In considering the question as to whether he had been sitting back, viewing the walk over by the private respondents, it has to be noticed that, following Ext.P1 final seniority list dated 24/12/1994, he made Ext.P2 request to the District Judge on 10/01/1995 seeking review of that list. Essentially that was a representation which could be treated as a dispute regarding seniority referable to Rule 27B of Part II KS&SSR and, therefore, it could not have been tied down, against the petitioner, on the ground that he had not filed objections to the provisional seniority list. If Rule 27B of Part II KS&SSR is applied, subject to the fact

that Ext.P2 was addressed to the District Judge, it would have been only appropriate that the same was forwarded to the High Court, which would be the authority in lieu of the Government, to consider such a dispute in terms of Rule 27B of the General Rules. Not only that, it is not the case of the private respondents that equities had changed by 10/01/1995, when petitioner raised his objections or that any among them had enjoyed any further promotion by then. While it is, rightly, not pleaded by the official respondents that the petitioner is guilty of sitting back, it is not an indefeasible proposition that one cannot object to a seniority list, on the sole ground that he had omitted to file objections to the provisional list when it is amply demonstrated that the erroneous placement, complained about, has resulted in injustice. I do not find any laches on the part of the petitioners, having regard to the law laid down by the Apex Court in **Mohd.Siddiq Ali vs. High Court of Andhra Pradesh [AIR 2005 SC 4380]** and by this Court in **Devaki vs. State of Kerala [2007 (2) KLT SN Pg.73]**.

9. Even if the petitioner had not challenged Ext.P3, but had objected thereafter only to the final seniority list as 01/07/1994, a

reference to Ext.P14 would apparently show that the petitioners case would have also been treated at par with that dealt with in Ext.P14.

In the aforesaid circumstances, this original petition is allowed in the following terms:-

i. Exts P3 and P11 and P13 are set aside.

ii. The second respondent is directed to forward Ext.P2 to the first respondent for consideration, as if it were an application under Rule 27B of Part II KS&SSR and for decision accordingly.

THOTTATHIL B.RADHAKRISHNAN,
Judge

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 24200 of 2001 (E)

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15th June, 2007